

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Bell Operating Company Provision)
of Out-of-Region Interstate,)
Interexchange Services)
_____)

CC Docket No. 96-21

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**OPPOSITION TO PETITION FOR
RECONSIDERATION AND/OR CLARIFICATION**

NYNEX Corporation ("NYNEX") hereby submits this Opposition to MCI Telecommunications Corp.'s petition for reconsideration or clarification of the Report and Order in the above-captioned proceeding.^{1/} NYNEX respectfully urges the Commission to deny MCI's request that international "return" traffic that is generated by a Bell operating company (BOC) through the provision of facilities-based out-of-region outbound international services, and is terminated by the BOC in its region, be considered "in-region services" under Section 271(j) of the Communications Act of 1934, as amended. By the plain language of Section 271(j) and the Commission's order in this proceeding, such return traffic is unquestionably excluded from the definition of in-region services. There is no need for reconsideration or clarification on this point; MCI is simply wrong.

^{1/} *Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, Report and Order, FCC No. 96-288 (rel. July 1, 1996) ("Out-of-Region Nondominance Order").*

I. International Return Traffic Is Not An In-Region Service Under Section 271(j)

In its petition, MCI notes that a BOC's facilities-based out-of-region outbound international traffic may, in the future and pursuant to international operating agreements, generate return traffic that would be carried to the U.S. by the BOC. MCI notes, further, that some of that traffic might terminate in the BOC's region, and MCI argues that this traffic should be considered an in-region service under Section 271(j). Accordingly, MCI argues that a BOC should therefore be barred under Section 271(b)(1) from carrying return traffic to its region until it obtains authority to provide in-region interLATA services pursuant to the process established in Section 271.

According to MCI, return traffic that terminates in a BOC's region should be considered in-region service under Section 271(j) because: (1) the traffic is generated by virtue of a U.S. international carrier's outbound international services; and (2) callers in foreign countries exercise no control over the choice of the U.S. international carrier to which their U.S.-bound "return" traffic will be routed for delivery in this country.^{2/} As MCI is fully aware, neither of these reasons is in any way relevant to a determination of whether a particular service is considered an in-region service under Section 271(j).

Section 271(j) specifies that certain types of interLATA traffic that originate outside a BOC's region nevertheless will be considered in-region services for purposes of Section 271. Specifically, the section states that a BOC's

[A]pplication to provide 800 service, private line service, or their equivalents that (1) terminate in an in-region State of that Bell operating company, and (2) allow the called party to determine the interLATA carrier, shall be considered

^{2/} MCI petition at 5.

an in-region service subject to the requirements of subsection (b)(1).^{3/}

Section 271(j) applies to a limited and clearly defined class of services, for which the called party is the party that orders the service, pays for it, and chooses the interLATA carrier. MCI attempts by its petition to shoe-horn into Section 271(j) a type of service that bears none of these characteristics.

With respect to calls originating abroad, the called party in the U.S. exercises no control whatsoever over the choice of the U.S. international carrier to which the traffic is routed. Accordingly, such return traffic is in no way "equivalent" to 800 or private line service and is plainly outside the ambit of Section 271(j). MCI itself admits that the called party to a U.S.-bound international call does not choose the interLATA carrier that is used.^{4/}

Furthermore, contrary to MCI's assertion that the *Out-of-Region Nondominance Order* "omitted any discussion" of the issue raised in its petition,^{5/} the Commission's statements in the order on the scope of Section 271(j) are definitive. The Commission stated therein that "[t]he key factor in determining whether a service falls within the scope of Section 271(j) ... is whether the called party determines the interLATA carrier that is used."^{6/} In rejecting requests that it treat calling card, collect and third-party billed calls as in-region services for purposes of Section 271, the Commission concluded that "[b]ecause the called party does not determine the interLATA carrier that is used, there is no justification for treating such calls

^{3/} 47 U.S.C. § 271(j).

^{4/} MCI Petition at 4.

^{5/} MCI Petition at 3.

^{6/} *Out-of-Region Nondominance Order*, *supra* n. 1, at ¶ 47.

as in-region services."^{7/} The same conclusion applies with equal force to international return traffic.

U.S.-bound international calls originating abroad differ in only one respect from the types of calls to which the Commission addressed itself in the order. Whereas the calling party chooses the interLATA carrier for collect calls, neither the called party nor the calling party determines the U.S. international carrier to which the traffic will be routed. But this difference is of no relevance in determining whether a service falls within the scope of Section 271(j). Again, the "key factor" is whether the called party chooses the interLATA carrier. In the case of international return traffic terminated by a BOC in its region, the called party does not choose the carrier.

Nor does MCI provide any support for its assertion that the termination of return traffic by a BOC in its region raises "similar competitive and ratepayer concerns" as traffic that originates in-region.^{8/} Whatever these ostensible concerns may be, Congress, in adding Section 271 to the Communications Act, saw no need for concern with respect to BOC provision of interLATA services that originate out-of-region and terminate in-region (except those services covered by Section 271(j)). Hence, Congress allowed the BOCs to provide such services immediately upon enactment of the Telecommunications Act of 1996. Such out-of-region services clearly include international return traffic generated by virtue of a BOC's out-of-region facilities-based international services.^{9/}

^{7/} *Id.*

^{8/} MCI Petition at 5.

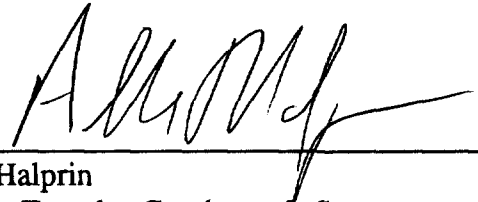
^{9/} As MCI is well aware, operating agreements between U.S. and foreign carriers generally require that the U.S. carrier generate a minimum threshold amount of traffic in order to be eligible to receive U.S.-bound return traffic from the foreign carrier. The

(continued...)

II. Conclusion

Given the plain language of the statute, and the clarity of the Commission's statements in the order at issue here, NYNEX respectfully urges the Commission to deny the petition.

Respectfully submitted,



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^{2/}(...continued)

likelihood that any of the BOCs will generate sufficient out-of-region outbound facilities-based international traffic before they obtain in-region authority under Section 271 is, at best, limited. To the extent that the BOCs generate little or no return traffic in the period preceding in-region authorization, the entire issue raised by MCI is essentially academic. This fact highlights the wastefulness of MCI's petition.

CERTIFICATE OF SERVICE

I, Katina L. Yates, do hereby certify that a copy of the foregoing Application, dated September 20, 1996, has been sent via mail, to the following:

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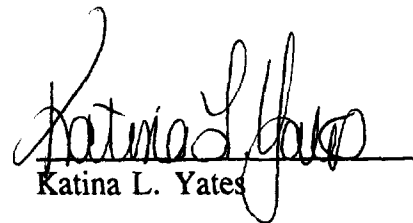
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